UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DAVIOLA PRODUCTION, LLC
d/b/a IMAGINARIUM

and **Case 28-CA-204315**

BROCK WILLIAMSON, an Individual
_____/

RESPONDENT DAVIOLA PRODUCTIONS, LLC'S OPPOSITION TO MOTION FOR DEFAULT JUDGMENT AND REQUEST FOR PERMISSION TO FILE ANSWER

KAMER ZUCKER ABBOTT
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Fax: (702) 259-8646

Attorneys for Respondent
Daviola Productions, LLC

Pursuant to the National Labor Relations Board's ("the Board") Rules and Regulations, Respondent Daviola Productions, LLC ("Daviola" or "the Company") respectfully requests that the Board deny General Counsel's Motion for Default Judgment and allow the Company to submit its answer to the Complaint. As set forth *infra*, good cause exists to deny the Motion for Default Judgment and to allow Daviola to submit its answer so that this matter may be adjudicated on its merits. Accordingly, Daviola requests that it be allowed to file its Answer as set forth in **Exhibit 1**.

I. FACTUAL BACKGROUND.

Daviola produces *IMAGINARIUM*—a breathtaking show presented by Luxembourg's award-winning illusionist, David Goldrake. *IMAGINARIUM* is located at the Tropicana Hotel and Casino on the world-famous Las Vegas Strip. **Exhibit 2**, Affidavit of David Goldrake. To its knowledge, the Company has never had any other charges or other issues come before the Board. Id. Notably, the principals of Daviola are not from the United States, but come from Luxembourg. Id. Accordingly, the Company is less familiar with the laws, regulations, and Board procedures governing workplaces in the United States. Id. Daviola just engaged the services of the undersigned and the law firm of Kamer Zucker Abbott on January 26, 2018 to address the Motion for Default Judgment and seek to have this matter addressed on the merits. Id. Prior to that time, Daviola did not have counsel with experience before the Board or familiar with the Board's policies and procedures. Id.

Daviola is party to an Entertainment Show Agreement with the Tropicana and Red Mercury Entertainment, LLC, a Las Vegas-based full-service entertainment company with over 20 years of experience. Id. Red Mercury provides resorts and casinos with comprehensive solutions for entertainment, technical direction, box office operations, showroom management,

and marketing. Pursuant to the Entertainment Show Agreement, Red Mercury furnishes and pays for the union personnel, including Complainant Brock Williamson, used by Daviola in its production. Id. Daviola does not have the right to hire or fire the union crew. Instead, the tasks of hiring, supervising, disciplining, and firing, as well as the obligation to apply the terms of the relevant collective bargaining agreement between the Tropicana and the I.A.T.S.E Local 720 ("the Union") falls under the purview of the Tropicana and Red Mercury. Id.

Despite being seemingly inseparable, the issues pertaining to Mr. Williamson are apparently being pursued on separate tracks. In particular, Mr. Williamson filed an unfair labor practice charge against Daviola on or about August 14, 2017. See Case No. 28-CA-204315. The charge generically alleged that, "Within the last six months preceding the filing of this charge, the above named-Employer, by its officers, agents, and representatives, has interfered, restrained and coerced its employees by, among other acts, causing Tropicana Las Vegas, Inc. to constructively discharge Brock Williamson because he engaged in union and protected concerted activities, in order to discourage union activities or members." See Charge in Case No. 28-CA-204315. At times, correspondence related to Case No. 28-CA-204315 has been sent to Daviola at the address for the Tropicana rather than its proper address.[1] Id. Such improperly mailed documents included the Charge, General Counsel's December 8, 2017 letter regarding its intent to seek a default judgment, and the Motion for Default Judgment. See Motion for Default Judgment at GCX 1, GCX 2, GCX 5, and GCX 6.

Mr. Williamson also filed an unfair labor practice charge against the Tropicana on or about August 14, 2017 for disciplining and constructively discharging him in retaliation for engaging in protected concerted activities. See Case No. 28-CA-204317. The Tropicana

[1]Daviola's proper address is 5115 Dean Martin Drive, Suite 512, Las Vegas, Nevada 89118-1748 not 3801 Las Vegas Boulevard South, Las Vegas, Nevada 89109-4317, which is the address of the Tropicana.

responded to the charge by refuting the claims and requesting that the matter be deferred to the grievance and arbitration process set forth in the applicable collective bargaining agreement between the Tropicana and the Union that represents Mr. Williamson. See Tropicana's Position Statement in Case No. 28-CA-204317. As set forth in its position statement, the Tropicana was admittedly Mr. Williamson's employer and made the decision to discipline him and remove him. Id. Significantly, the position statement submitted by the Tropicana also sets forth in detail the actual and legally justified basis for Mr. Williamson's removal, including his being distracted with his cellular telephone while neglecting his work duties during the show and surreptitiously watching female performers dress and undress as they made wardrobe changes during the show. Id. Ultimately, Region 28 agreed with the Tropicana and deferred the matter to the grievance and arbitration process. **Exhibit 3**, October 26, 2017 Deferral Letter.

II. LEGAL ARGUMENT.

The Board's Rules and Regulations are to be liberally construed, with the Board's stated policy preference being a decision on the merits. See 29 C.F.R. 102.121; Patrician Assisted Living Facility, 339 N.L.R.B. 1153, 1156 (2003) (Schaumber, M., dissenting); Paolicelli, 335 N.L.R.B. 881, 882 (2001); M.J. McNally, Inc., 302 N.L.R.B. 120 (1991). Section 102.20 of the Board's Rules and Regulations provides that "[a]ll allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the Respondent states in the answer that the Respondent is without knowledge, will be deemed to be admitted to be true and will be so found by the Board, ***unless good cause to the contrary is shown***." 29 C.F.R. § 102.20 [emphasis added]. Answers to complaints may be filed within a reasonable time after the time set forth in the Board's prescribed rules "only upon good cause shown based on excusable neglect and when no undue prejudice would result." 29 C.F.R.

§ 102.2(d)(1). Thus, the Board's own excusable neglect standard permits the late filing of an answer even when there is a showing of fault. St. Regis Enters., LLC, 364 N.L.R.B. No. 137 (Oct. 27, 2016) (Miscimarra, P., dissenting). The U.S. Supreme Court has found that excusable neglect may include "inadvertence, mistake, or carelessness, as well as...intervening circumstances beyond the party's control." Pioneer Investment Servs. Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 388 (1993).

Here, good cause exists to deny the Motion for Default Judgment and to allow Daviola to file its proposed answer to the Complaint. While the fact that Daviola did not initially timely respond is unfortunate, several factors support allowing this matter to proceed on the merits rather than through the imposition of a default judgment. As set forth *supra*, Daviola's principals are from Luxembourg and they did not fully understand the gravity of failing to respond to the Board's processes. Only just recently did the Company engage counsel with experience and knowledge about the Board's policies and procedures. After doing so, the Company acted quickly to respond to the Motion for Default Judgment and to respectfully request an opportunity to have the matter heard on the merits. Furthermore, the overlay of employee supervision and employee control among multiple entities, the fact that the Tropicana is actively addressing essentially the same assertions made against Daviola through arbitration and a Board proceeding, and the mailing of pertinent documents to both Daviola and the Tropicana generated an environment ripe for confusion that should be considered by the Board in granting Daviola's requested relief.

Notably, no party to this proceeding will be prejudiced by allowing Daviola to submit its answer and to have the Complaint heard on the merits. Indeed, there is no showing or allegation by the General Counsel that relevant evidence has been or will be lost or that its witnesses have

become unavailable. Furthermore, Mr. Williamson will not suffer any prejudice because, if the General Counsel prevails on the merits after a hearing, the Board would order the appropriate make-whole remedy at that time.

On the other hand, the imposition of a default judgment against Daviola severely prejudices the parallel proceedings involving Mr. Williamson's employer, the Tropicana, Mr. Williamson, and the Union. In particular, given the nature of the parallel proceedings, a default judgment would destabilize the ongoing arbitral and Board proceedings and collective bargaining relationship between the Tropicana and the Union and create the substantial likelihood of conflicting factual findings and remedies, especially in view of the General Counsel's factual assertion that the Tropicana is Mr. Williamson's actual employer. In view of the prejudicial effect that will arise should the Board enter a default judgment against Daviola, the Board should allow the Company to file an answer and move this matter to a resolution on the merits.

Furthermore, a default judgment is not warranted here because the Complaint does not allege sufficient facts demonstrating a violation of the National Labor Relations Act ("the Act") such that a default judgment should be imposed on Daviola. As pointed out by former Chairman Battista, "it is the Board's responsibility, in such cases, to examine the complaint and make an informed judgment as to whether the complaint will support a motion for default judgment." In re Morrone, 340 N.L.R.B. 1196, 1203 (2003) (Chairman Battista, dissenting). If the complaint is not well pled, default judgment should be denied and, instead, General Counsel should be free to seek leave to amend the complaint to make the allegations clearer and legally viable. Id.; see also County Concrete Corp., 2017 WL 4684391, Case Nos. 22-CC-083895, 22-CE-084893, at *2 (Oct. 17, 2017) (denying a renewed motion for default judgment because, even if the complaint

allegations are deemed true, the Board could not make conclusions of law adverse to the respondent or issue a remedial order as the allegations did not make out a violation of the Act). As noted by Member Schaumber:

> The General Counsel acts as the prosecutorial arm of the agency. When we fail to impose on the General Counsel before entering a default judgment at his request the substantive standards the law requires, we send the wrong message. Further, if the binding and conclusive character of a default judgment entered without an ex parte inquiry into the sufficiency of the movant's evidence prompted the Supreme Court in *Thomson v. Wooster* to remind lower federal courts that default judgments cannot properly be entered on a complaint which is not well pled, a fortiori default judgments should not be entered by the Board on complaints, such as the one here, which do not properly allege a violation of the Act. This is so because default judgments entered by the Board are far more difficult to have set aside than are those entered by a court. Federal courts view default judgments with disfavor, as a drastic remedy to be reserved for extreme circumstances and rare occasions [internal citations omitted].

Artesia Ready Mix Concrete, Inc., 339 N.L.R.B. 1224, 1230 (2003) (Schaumber, M. dissenting).

Here the limited allegations of the complaint do not support the making of adverse conclusions of law against Daviola or the issuance of a remedial order because the allegations do not make out a violation of the Act. The complaint in the present matter makes the following generic (and somewhat confusing and inconsistent due to the interplay between the Tropicana and Daviola) assertions of unlawful conduct:

> 5. (a) At all material times, the Employer [the Tropicana] and the Union have maintained in effect and enforced a collective-bargaining agreement covering wages, hours, and other terms and conditions of employment of certain employees of the Employer [the Tropicana] at the Employer's facility (the Agreement).
>
> (b) At all material times, Respondent has applied the Agreement to its employees.
>
> (c) About July 27, 2017, the Respondent's employee Williamson filed a claim in the Employer's [the Tropicana's] Human Resources regarding Jake Roeber's interactions with employees.
>
> (d) The claims of Respondent's employee Williamson described above

in paragraph 5(c) relate to the Agreement described above in paragraphs 5(a) and 5(b).

(e) On a date in or around late July 2017, a more precise date being unknown to the General Counsel, Respondent requested the Employer [the Tropicana] to remove Williamson from Respondent's facility.

(f) About August 4, 2017, Respondent, by its conduct described above at paragraph 5(e), caused the Employer [the Tropicana] to move Williamson from full-time to on-call status, thereby removing Williamson from Respondent's schedule of work for its employees.

(g) Respondent engaged in the conduct described above in paragraphs 5(e) and (f) because Williamson engaged in the activity described above in paragraphs 5(c) and 5(d), and to discourage employees from engaging in these other concerted activities.

(h) Respondent engaged in the conduct described above in paragraphs 5(e) and (f) because Williamson formed, joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

See Complaint in Case No. 28-CA-204315 at ¶ 5. Such non-specific allegations, even under a notice pleading standard, do not support an adverse finding that Daviola violated the Act. Moreover, Daviola specifically denies that it engaged in the asserted unlawful conduct as alleged by the General Counsel. Thus, the Board should adopt the appropriate standard set forth by former member Schaumber and former Chairman Battista by truly examining the Complaint and concluding that it does not factually support the imposition of a default judgment. Such a course of action is even more appropriate where, as here, the same issues are being adjudicated on a parallel track through a separate arbitration and Board proceeding.

III. CONCLUSION.

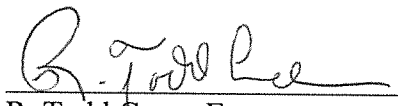
For the aforementioned reasons, Respondent respectfully requests that it be allowed to submit an answer to the Complaint and Notice of Hearing within a time designated by the Board and that this matter be remanded to the Administrative Law Judge for adjudication on the merits

of the Complaint.

DATED this 1st day of February, 2018.

Respectfully submitted,

KAMER ZUCKER ABBOTT

By: 

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Nevada Bar No. 13423
3000 West Charleston Boulevard, Suite 3
Las Vegas, Nevada 89102
Tel: (702) 259-8640
Fax: (702) 259-8646

Attorneys for Respondent
Daviola Productions, LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2018, I did serve a copy of the foregoing **RESPONDENT DAVIOLA PRODUCTIONS, LLC'S OPPOSITION TO MOTION FOR DEFAULT JUDGMENT AND REQUEST FOR PERMISSION TO FILE ANSWER** upon:

Office of the Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

VIA ELECTRONIC FILING

Cornele A. Overstreet, Regional Director
National Labor Relations Board, Region 28
2600 North Central Avenue, Suite 1400
Phoenix, Arizona 85004-3099

VIA CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED

Stephen P. Kopstein, Esq.,
National Labor Relations Board, Region 28
Las Vegas Resident Office
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, Nevada 89101-6637
stephen.kopstein@nlrb.gov

VIA ELECTRONIC MAIL

Mr. Brock Williamson
6788 Cherry Grove Avenue
Las Vegas, Nevada 89156-7108

VIA CERTIFIED MAIL WITH RETURN RECEIPT

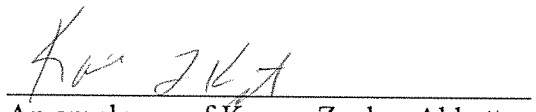
By: 
An employee of Kamer Zucker Abbott

EXHIBIT 1

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

DAVIOLA PRODUCTION, LLC
d/b/a IMAGINARIUM

and **Case 28-CA-204315**

BROCK WILLIAMSON, an Individual
_____/

ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT

Respondent Daviola Productions, LLC (hereinafter "Respondent"), by and through its counsel of record, the law firm of Kamer Zucker Abbott, hereby submits the following Answer and Affirmative Defenses to the Complaint issued by the Regional Director on October 31, 2017. Respondent denies each and every allegation in all Paragraphs, except for those Paragraphs and portions of Paragraphs expressly and specifically admitted or otherwise referenced *infra*.

1. Respondent admits that the charge identified in Paragraph 1 was filed on or about the dates indicated, though Respondent neither admits nor denies, for lack of sufficient information, the precise filing and service dates. Respondent denies that the charge was properly served on Respondent.

2. Respondent admits the allegations contained in Paragraph 2, subparts (a), (c) and (d). Respondent denies the allegations contained in Paragraph 2, subparts (b) and (e). Respondent states that it lacks sufficient information to either admit or deny Paragraph 2 subparts (f), (g), (h) and (i).

3. Respondent states that it lacks sufficient information to either admit or deny Paragraph 3.

4. Respondent admits only the supervisory status of David Goldrake and Jake Roeber. Respondent denies the remaining allegations contained in Paragraph 4 of the Complaint.

5. Respondent admits the allegations contained in Paragraph 5, subpart (a). Respondent denies the remaining allegations contained in Paragraph, including all other subparts of Paragraph 5.

6. Respondent denies as untrue all other allegations, characterizations, inferences, and legal conclusions as pleaded in Paragraphs 6, 7 and 8 and all subparts.

Respondent generally denies each and every other allegation in the Complaint not specifically addressed above.

AFFIRMATIVE DEFENSES

1. Respondent does not admit any of the Complaint's allegations except as specifically set forth above. For the purposes of this Affirmative Defense only, Respondent alleges that the Complaint fails to state claims upon which relief may be granted.

2. Any actions taken by Respondent against any employee were motivated by legitimate, non-discriminatory business reasons and considerations, including employee misconduct.

3. Respondent lacks the requisite authority to hire, fire or discipline individuals employed by other entities and could, therefore, not effectuate the employment termination set forth in the Complaint.

4. Respondent reserves the right to modify or supplement its Affirmative Defenses following further proceedings.

WHEREFORE, Respondent requests that the Complaint be dismissed in its entirety.

DATED this ____ day of February, 2018.

CERTIFICATE OF SERVICE

I hereby certify that on February ___, 2018, I did serve a copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT** upon:

Cornele A. Overstreet, Regional Director
National Labor Relations Board, Region 28
2600 North Central Avenue, Suite 1400
Phoenix, Arizona 85004-3099

VIA CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED

Stephen P. Kopstein, Esq.,
National Labor Relations Board, Region 28
Las Vegas Resident Office
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, Nevada 89101-6637
stephen.kopstein@nlrb.gov

VIA ELECTRONIC MAIL

Mr. Brock Williamson
6788 Cherry Grove Avenue
Las Vegas, Nevada 89156-7108

VIA CERTIFIED MAIL WITH RETURN RECEIPT

By: _____
An employee of Kamer Zucker Abbott

EXHIBIT 2

EXHIBIT 2

AFFIDAVIT OF DAVID GOLDRAKE

David Goldrake, on his oath, deposes and says:

1. I am voluntarily providing this Affidavit. The facts and matters stated herein are true to the best of my knowledge, information, and belief, except as otherwise stated.

2. I am an award-winning illusionist for the show IMAGINARIUM, which is currently performed at the Tropicana Hotel and Casino ("Tropicana") in Las Vegas, Nevada. IMAGINARIUM is produced by Daviola Productions, LLC ("Daviola"). I am also a principal for Daviola.

3. Daviola, Tropicana, and Red Mercury Entertainment, LLC ("Red Mercury"), a Las Vegas entertainment company, are parties to an Entertainment Show Agreement ("the Agreement"). The Agreement specifies that Red Mercury is to provide and pay the union personnel used in productions of IMAGINARIUM. As such, Daviola does not have the right to hire, discipline, or fire the union crew used in IMAGINARIUM. Daviola also does not deal with the terms of the collective bargaining agreement ("CBA") between Tropicana and I.A.T.S.E. Local 720. Those obligations are handled by Red Mercury and/or Tropicana.

4. All of the principals of Daviola, including myself, are from Luxembourg. Thus, we are not familiar with laws, regulations, or National Labor Relations Board ("NLRB") procedures that deal with the workplace. Further, until January 26, 2018, we did not have counsel with experience before the NLRB helping us become more familiar as we had never had other charges or issues brought to our attention. We have since hired Kamer Zucker Abbott to address our concerns, including Mr. Brock Williamson's Unfair Labor Practice Charge and the resulting Complaint.

5. Upon information and belief, on August 14, 2017, Tropicana received an Unfair Labor Practice Charge from Mr. Williamson. As the employer of Mr. Williamson, Tropicana responded to its Charge and requested the matter be deferred in accordance with the CBA's grievance and arbitration process. That request was granted by the Board.

6. Some of the correspondence from the NLRB for Daviola has been sent to Tropicana's address rather than Daviola's address.

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Executed on Date: 01 / 31 / 2018

Affiant

EXHIBIT 3

EXHIBIT 3

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602) 640-2160
Fax: (602) 640-2178

October 26, 2017

Anthony L. Martin, Attorney at Law
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
3800 Howard Hughes Parkway, Suite 1500
Las Vegas, NV 89169-5921

Mr. Brock Williamson
6788 Cherry Grove Avenue
Las Vegas, NV 89156-7108

Re: Tropicana Las Vegas, Inc.
Case 28-CA-204317

Gentlemen:

The Region has carefully considered the charge alleging that Tropicana Las Vegas, Inc. (the Employer) violated the National Labor Relations Act (the Act). As explained below, I have decided that further proceedings on the charge should be handled in accordance with the deferral policy of the National Labor Relations Board as set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984). This letter explains that deferral policy, the reasons for my decision to defer further processing of the charge, and the Charging Party's right to appeal my decision.

Deferral Policy: The Board's deferral policy provides that the Board will postpone making a final determination on a charge when a grievance involving the same issue can be processed under the grievance/arbitration provision of the applicable contract. This policy is partially based on the preference that the parties use their contractual grievance procedure to achieve a prompt, fair, and effective settlement of their disputes. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Board's Regional Office will defer the charge.

Decision to Defer: Based on our investigation, I am deferring further proceedings on the charge in this matter to the grievance/arbitration process for the following reasons:

1. The Employer and International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its

Territories and Canada, Local 720, AFL-CIO, CLC (the Union) have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.

2. The alleged Section 8(a)(1) and (3) discipline issued to employee Brock Williamson and the Employer's surveillance and its creating the impression that employee's Union activities were under surveillance, are encompassed by the terms of the collective-bargaining agreement.

3. The Employer is willing to process a grievance concerning the issues in the charge, and will arbitrate the grievance if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the dispute.

4. Since the issues in the charge appear to be covered by provisions of the collective-bargaining agreement, it is likely that the issues may be resolved through the grievance/arbitration procedure.

Further Processing of the Charge: As explained below, while the charge is deferred, the Regional office will monitor the processing of the grievance and, under certain circumstances, will resume processing of the charge.

Charging Party's Obligation: Under the Board's *Collyer* deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly submit the grievance to the grievance/arbitration process or declines to have the grievance arbitrated if it is not resolved, I may dismiss the charge.

Union/Employer Conduct: If the Union or Employer fails to promptly process the grievance under the grievance/arbitration process; declines to arbitrate the grievance if it is not resolved; or if a conflict develops between the interests of the Union and the Charging Party, I may revoke deferral and resume processing of the charge.

Charged Party's Conduct: If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed, or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

Monitoring the Dispute: Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and if continued deferral is appropriate. However, at any time, a party may present evidence and request dismissal of the charge, continued deferral of the charge, or issuance of a complaint.

Notice to Arbitrator Form: If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to

ensure that the Region receives a copy of an arbitration award when the arbitrator sends the award to the parties.

Review of Arbitrator's Award: If the grievance is arbitrated, the Charging Party may ask the Board to review the arbitrator's award. The request must be in writing and addressed to me. Because the parties have explicitly authorized the arbitrator to decide the statutory issue in this case, the Board's deferral standards applicable in this case are those set forth in *Babcock & Wilcox Construction Co.*, 361 NLRB No. 132 (2014), which is available on our website, www.nlrb.gov. Any request for review of an arbitrator's award should analyze (1) whether the parties explicitly authorized the arbitrator to decide the statutory issue; (2) whether the arbitrator was presented with and considered the statutory issue, or was prevented from doing so by the party opposing deferral; and (3) whether Board law reasonably permits the award. The party urging deferral has the burden to prove these standards are met.

Review of Grievance Settlement: If the grievance is settled, the Charging Party may ask the Board to review the grievance settlement. The Board's deferral standards applicable to any grievance settlement in this case are also set forth in *Babcock & Wilcox Construction Co.*, 361 NLRB No. 132 (2014). Any request for review of a grievance settlement should analyze (1) whether the parties intended to settle the unfair labor practice issue; (2) whether the parties addressed the statutory issue in the settlement; and (3) whether Board law reasonably permits the grievance settlement agreement. The party urging deferral has the burden to prove these standards are met. In assessing whether to defer to the settlement, I will also consider the factors identified by the Board in *Independent Stave Co.*, 287 NLRB 740, 743 (1987).

Charging Party's Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

1) Click on E-File documents:
2) Enter your NLRB Case Number; and,
3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

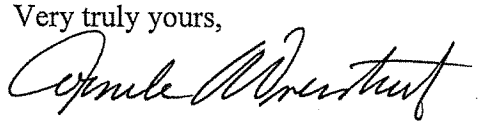
Appeal Due Date: The appeal is due on November 9, 2017. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than November 8, 2017. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before November 9, 2017**. The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **November 9, 2017, even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge.

Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



Cornele A. Overstreet
Regional Director

Enclosures

cc: See next page.

Tropicana Las Vegas, Inc.
3801 Las Vegas Boulevard, South
Las Vegas, NV 89109-4325

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 720, AFL-CIO, CLC
3000 South Valley View Boulevard
Las Vegas, NV 89102-7841

CAO/BBB/lg

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
NOTICE TO ARBITRATOR

TO: _____
(Arbitrator)

_____
(Address)

_____

NLRB Case Number
28-CA-204317

NLRB Case Name: **Tropicana Las Vegas, Inc.**

A determination has been made by the Regional Director of Region 28 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge.

So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be sent to Regional Director, Region 28, 2600 North Central Avenue, Phoenix, AZ 85004 at the same time that it is sent to the parties in the arbitration.

_____
(Name)

_____
(Title)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

I am appealing the action of the Regional Director in deferring the charge in

Tropicana Las Vegas, Inc.
Case Name(s).

28-CA-204317
Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)